IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6044 & 6045 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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MUGTEX DYEING AND PRINTING MILLS
Versus
UNION OF INDIA

Appearance:
1. Special Civil Application No. 6044 of 2002
MR SUDHIR M MEHTA for Petitioner No. 1
MR DN PATEL for Respondent No. 1
NOTICE SERVED BY DS for Respondent No. 2

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE K.A.PUJ

Date of decision: 06/08/2002

COMMON ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

Rule.

Mr.D.N.Patel, Ld. Senior Standing Counsel waives service of rule for the respondents.

In the facts and circumstances of the case, the petition is taken up for final hearing today. As both the petitions involve common questions of law and fact, the petitions are heard together and are disposed of by this common judgement.

2. The petitioners' grievance in this petition under Article 226 of the Constitution of India is regarding nonpayment of refund of duty recovered from the petitioners earlier. The petitioners had filed refund applications which came to be dismissed by the Asst. Commissioner, Central Excise, Division - I, Surat by his order dated 29.3.96. The orders of the Asst. Commissioner came to be challenged in appeals before the Commissioner (Appeals), Central Excise and Customs, Surat. By order dated 28.10.1999, the appeals were allowed and the matters were remanded to the adjudicating authority with a direction to follow the principles of natural justice and reassess the goods as per the decision of the Honourable Supreme Court and to order recovery or refund, as the case may be, on such redetermination.

3. The submission of the learned counsel for the petitioners is that either Commissioner (Appeals) should have allowed the appeal and directed the authorities to refund the amount on the basis of the principles laid down by the Honourable Supreme Court in Ujjagar Prints & others V. Union of India reported in 1988 (38) ELT 53 r.w.1989 (39) ELT 493 or atleast the appellate authority ought to have directed the adjudicating authority to consider the petitioner's application for refund within a specified time limit. It is submitted that inspite of passage of more than 2 years after the order of remand, the petitioner's refund applications are still pending.

4. Having heard Mr.Mehta, learned counsel for the petitioner and Mr.D.N.Patel, learned standing counsel for the respondents, we are of the view that since the order of remand was passed by the Commissioner (Appeals) in 1999, it would not be proper to entertain this petition filed in the year 2002. But at the same time, when the Commissioner had given specific direction to the adjudicating authority to re-examine the matter and go

for denovo adjudication after following the principles of natural justice and after following the decision of the Hon'ble Supreme Court, the adjudicating authority was expected to decide the mater expeditiously.

5. Since that has not been done so far, we direct respondent no.2 Asst. Commissioner of Central Excise, Division I, Surat to consider and decide in accordance with law the petitioners' applications for refund in light of the order of remand dated 28.10.99 at Annexure E to the petition and also in light of the decisions of the Hon'ble Supreme Court in Ujjagar Prints 38 ELT 53 and 39 ELT 493, as expeditiously as possible and in any case within two months from the date of the receipt of writ of this Court or a certified copy of this order, whichever may be earlier.

6. We may not be treated to have expressed any opinion on merits either way.

7. The petitions are accordingly allowed in in the aforesaid terms. Rule is made absolute with no order as to costs.

(M.S.Shah, J) (K.A.Puj, J)
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